

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In Re Applications of)	WT Docket No. 97-199
)	
Westel Samoa, Inc.)	File No. 00560-CW-L-96
)	
For Broadband Block C Personal)	
Communications Systems Facilities)	
)	
and)	
)	
Westel, L.P.)	File Nos. 00129-CW-L-97
)	00862-CW-L-97
For Broadband Block F Personal)	00863-CW-L-97
Communications Systems Facilities)	00864-CW-L-97
)	00865-CW-L-97
)	00865-CW-L-97

To: The Honorable Arthur I. Steinberg
Administrative Law Judge

**WIRELESS TELECOMMUNICATIONS BUREAU'S COMMENTS
IN SUPPORT OF PETITION TO INTERVENE**

On November 13, 1997, ClearComm, L.P. (ClearComm), formerly known as PCS 2000, L.P., filed a Petition to Intervene (Petition) in the above-captioned proceeding. For the reasons set forth below, the Chief, Wireless Telecommunications Bureau supports ClearComm's Petition.

1. Section 309(e) of the Communications Act of 1934, as amended, provides that:

When the Commission . . . designates an application for hearing, the parties-in-interest, if any, who are not notified by the Commission of such action may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest not more than thirty days after publication of the hearing issues . . . in the Federal Register.

47 U.S.C. § 309(e). Section 1.223(a) of the Commission's Rules, which implements this statutory provision, provides that:

Where, in cases involving applications for construction permits and station licenses . . . the Commission has failed to notify and name as a party to the hearing any person who qualifies as a party in interest, such person may acquire the status of a party by filing . . . a petition for intervention showing the basis of its interest. . . . Where the person's status as a party in interest is established, the petition to intervene will be granted.

47 C.F.R. § 1.223(a). Based on these provisions, the Bureau believes that ClearComm may intervene as a matter of right.

2. ClearComm has established that its interests may be affected by the instant proceeding. The factual scenario which led to the instant proceeding arose from a bidding error by ClearComm's predecessor, PCS 2000, in the Commission's C Block PCS auction. Quentin L. Breen, a party to this proceeding, is a former director of Unicom Corporation, the general partner of PCS 2000 at the time the bidding error took place. Issue 2(A) in this proceeding is to determine the facts and circumstances surrounding the conduct of Mr. Breen in connection with PCS 2000's January 23, 1996, overbid. Therefore, evidence could be adduced which could affect ClearComm's interests.

3. In *PCS 2000, L.P.*, Memorandum Opinion and Order, 12 FCC Rcd 1681 (1997) (MO&O), *recon. pending*, the Commission granted PCS 2000 several broadband C Block Personal Communications Systems licenses. The grant of those licenses is not yet final because a petition for reconsideration of that action is pending. Although the Bureau does not intend to use the instant proceeding to investigate ClearComm's qualifications -- the Bureau is satisfied that the Commission fully resolved that issue in the MO&O -- because this proceeding involves the conduct of officers of PCS 2000, ClearComm plainly has an identifiable interest in this proceeding. While the Bureau does not believe that ClearComm's pending litigation against Romulus Telecommunications, Inc. gives ClearComm a cognizable interest in this proceeding,

the fact that this proceeding will necessarily make findings concerning PCS 2000 qualifies ClearComm as a party in interest entitled to intervention as of right.

4. If the Presiding Judge believes that ClearComm has failed to justify intervention as of right, ClearComm should be allowed discretionary intervention pursuant to Section 1.223(b) of the Commission's Rules. Section 1.223(b) of the Rules provides that:

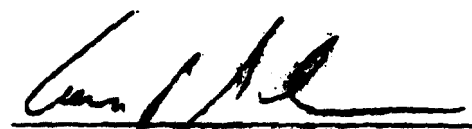
Any other person desiring to participate as a party in any hearing may file a petition for leave to intervene . . . [and] must set forth the interest of petitioner in the proceedings, [and] must show how such petitioner's participation will assist the Commission in the determination of the issues in question.

47 C.F.R. § 1.223(b). As shown above, ClearComm has established that it has an interest in the proceeding. Moreover, ClearComm has also demonstrated that it will be able to assist in the adduction of evidence in this proceeding. The conduct in question surrounds former officers of PCS 2000 who were acting as agents of PCS 2000 at the time the misconduct took place. Accordingly, ClearComm is well able to assist in the discovery of evidence of the events relevant to the designated issues. Furthermore, current employees of ClearComm may be valuable witnesses in this proceeding. The Bureau notes that ClearComm's president, Javier Lamoso, has been noticed to give deposition testimony.

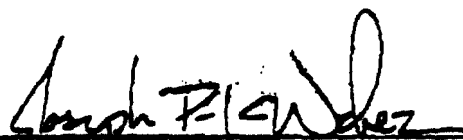
5. Accordingly, the Bureau supports the grant of ClearComm's "Petition to Intervene."

Respectfully Submitted,

Daniel B. Phythyon
Chief, Wireless Telecommunications Bureau



Gary P. Schonman
Chief, Compliance and Litigation Branch
Enforcement and Consumer Information Division

By: 

Joseph Paul Weber
Katherine Power
Trial Attorneys

Federal Communications Commission
Wireless Telecommunications Bureau
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November 24, 1997

CERTIFICATE OF SERVICE

I, Joseph Weber, so hereby certify that I have on this 24th day of November, 1997, have had copies of the foregoing COMMENTS ON PETITION TO INTERVENE delivered to the following:

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Administrative Law Judge
Federal Communications Commission
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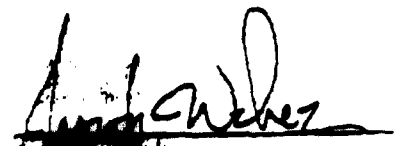

Joseph Weber

EXHIBIT D

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)
)
WESTEL SAMOA, INC.)
)
For Broadband Block C Personal)
Communications Systems Facilities)
)
and)
)
WESTEL, L.P.)
)
For Broadband Block F Personal)
Communications Systems Facilities)

WT Docket No. 97-199

To: Honorable Arthur I. Steinberg
Administrative Law Judge

OPPOSITION TO PETITION TO INTERVENE

WESTEL SAMOA, INC.
WESTEL, L.P.
QUENTIN L. BREEN

A. Thomas Carroccio
Ross A. Buntrock
Brian Cohen

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November 28, 1997

SUMMARY

The Presiding Judge should deny the Petition to Intervene of Clearcomm, L.P., because Clearcomm does not have any cognizable interest upon which party-in-interest status might be based; the interest claimed by Clearcomm does not fall within the zone of interests to be protected by the Commission; there has been no demonstration that Clearcomm's intervention would enhance the development of a complete and accurate record; and allowing Clearcomm to intervene at this time would substantially and unfairly delay resolution of this proceeding.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	
)	
WESTEL SAMOA, INC.)	
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For Broadband Block C Personal)	
Communications Systems Facilities)	
)	
and)	
)	
WESTEL, L.P.)	
)	
For Broadband Block F Personal)	
Communications Systems Facilities)	
To: Honorable Arthur I. Steinberg		
Administrative Law Judge		

WT Docket No. 97-199

OPPOSITION TO PETITION TO INTERVENE

Westel Samoa, Inc. ("WSI"), Westel, L.P. ("WLP") and Quentin L. Breen ("Mr. Breen") (WSI, WLP and Mr. Breen collectively the "Westel Parties"), by their attorneys and pursuant to Section 1.223 of the Commission's Rules, hereby oppose the November 13, 1997 "Petition to Intervene" filed in the instant proceeding by ClearComm, L.P. ("ClearComm").¹ For their opposition, the Westel Parties state as follows:

Procedural Posture

As an initial matter, it must be noted that ClearComm did not participate in any earlier proceedings regarding the WSI or

¹ Clearcomm previously was known as PCS 2000, L.P. This pleading adopts the Petition's convention of referring to that entity as Clearcomm, regardless of its name at a specific time.

WLP applications which are the subjects of the instant hearing.² Although ClearComm had ample notice of the full significance of the subject applications, it did not file any petition or comment with regard to those applications.³ Having failed to participate in, and thereby contribute to, the prehearing review and processing of the subject applications, ClearComm should not be allowed to freely intervene at this stage of the proceeding. If ClearComm had any interest in the subject applications, or if it could have contributed to the Commission's early resolution of issues attendant with the subject applications (and thereby possibly obviate the need for any hearing) it should have sought to participate in response to the Commission's earliest public notices regarding the subject applications.⁴

² While acknowledging that Clearcomm's November 13, 1997 Petition was filed within the time afforded by the Rules for seeking intervention, albeit at the eleventh hour, the Westel Parties are constrained to point out that (i) publication of the hearing designation order in the Federal Register was delayed inordinately (not occurring until October 15, 1997, the date of the prehearing conference in this proceeding and a date more than one month after the Commission's release of the hearing designation order); (ii) Clearcomm was procedurally able to seek intervention any time after the Commission's September 9, 1997 release of the hearing designation order; and (iii) Clearcomm has long been aware of the relatively accelerated procedural schedule in this proceeding (counsel for Clearcomm having been observers at the prehearing conference).

³ PCS 2000, L.P. ("NAL"), 12 FCC Rcd 1703, at ¶ 50 (1997) (Mr. Breen's character qualifications are to be examined in the context of the WSI and WLP applications, not in the context of Clearcomm's applications).

⁴ In this regard, it should be noted that Clearcomm does not suggest that it now has interests or information that it did not have during earlier application processing stages.

ClearComm Has No Cognizable Interest In This Proceeding

To intervene herein as a matter of right, ClearComm must demonstrate that it has a cognizable interest in this proceeding. See, 47 U.S.C. § 309(e). Intervention under section 1.223(a) of the Commission's rules is available only to a "person who qualifies as a party in interest." To now qualify as a party in interest, ClearComm must show (1) injury in fact that is both (2) fairly traceable to the challenged action and (3) likely to be redressed by the relief requested.²

To meet that test, ClearComm first is required to demonstrate that the disposition of this case would cause it "injury of a direct, tangible or substantial nature."³ The Westel Parties respectfully submit that there has been no such showing by ClearComm.

ClearComm claims the outcome of the instant proceeding may also affect the outcome of its civil lawsuit against Romulus Telecommunications, Inc. ("Romulus"), a corporation in which Mr. Breen has a beneficial interest. In this regard, ClearComm appears to be concerned that the vindication of Mr. Breen in the instant proceeding may cause Romulus to be relieved of the civil liability ClearComm has asserted against Romulus.

² Lujan v. Defenders of Wildlife, 504 U.S. 555, 559 (1992); JAJ Cellular v. FCC, 54 F.3d 834, 837 n. 5 (D.C. Cir. 1995); Conn-2 RSA Partnership, 9 FCC Rcd 3295, 3297 (1994).

³ PCS 2000, L.P. ("MO&O"), 12 FCC Rcd 1681, 1692 (1997) (citing Teleprompter Corp., 87 FCC 2d 531, 537 (1989), aff'd, 89 FCC 2d 417 (1982)).

It is well established that standing is accorded to persons not for the protection of their general private interests but only to vindicate the public interest with regard to matters within the zone of interest to be protected by the Commission.⁷ The civil claims asserted by ClearComm against Romulus, being based on contract and tort, do not lie within the zone of interests to be protected by the Commission and, therefore, are not appropriate subjects for adjudication by the Commission.⁸ Instead, ClearComm's claims are private disputes among private litigants, none of which are parties to this proceeding, and, therefore, ClearComm's civil claims should be left for adjudication by a civil court.⁹ Conjecture as to possible impact upon a collateral civil action does not constitute injury in fact which could be fairly traceable to any action in this case. ClearComm, therefore, has failed to establish the requisite "causal nexus" between possible injury in the civil case and the outcome of this case.¹⁰ In sum, because it has not demonstrated it has a tangible economic interest in the outcome

⁷ Office of Communication of the United Church of Christ v. FCC, 359 F.2d 994, 1001 [7 R.R. 2d 2001] (1966). Arizona Mobile Telephone Co., 47 R.R. 2d 1603 (1980).

⁸ It also should be noted that Clearcomm's claims in the civil action are asserted against only Romulus and Anthony T. Easton. Mr. Breen is not a named party to that proceeding and, conversely, Romulus and Mr. Easton, who are named parties in the civil action, are, like Clearcomm, not presently parties to the instant proceeding.

⁹ MCI Communications Corp., 10 FCC Rcd 1072, 1074 (1994).

¹⁰ MO&O, 12 FCC Rcd at 1692.

of the instant proceeding, ClearComm is not entitled to participate herein as a matter of right.¹¹

ClearComm also claims to be concerned that "findings in this case could clearly affect ClearComm's standing before the FCC." The Westel Parties, however, submit that ClearComm's concern are without valid basis. The Commission's decisions in the PCS 2000 proceeding make it clear that ClearComm's qualifications and licenses are not in any way dependent upon the past actions or present qualifications of WSI, WLP or Mr. Breen.¹² In fact, the Commission gave specific notice that it would address the qualifications of Mr. Breen, WSI and WLP in a proceeding separate and independent from any proceedings involving ClearComm's licenses, qualifications or liability for monetary forfeiture.¹³

The Westel Parties submit that the Petition's reliance upon the Palmetto case is misplaced.¹⁴ In Palmetto, the applicant's

¹¹ Telephone and Data Systems, Inc., 9 FCC Rcd 2780, 2781 (Rev. Bd., 1994).

¹² MO&O, at ¶ 1 ("Because [Clearcomm] has removed all individuals [presumably including Mr. Breen] who may have been responsible for the misrepresentations from its organization, we conclude that PCS 2000's applications, as amended, may be granted"). NAL, at ¶ 50 (the determination of Clearcomm's qualifications does not require consideration of Mr. Breen's role in the alleged misrepresentations because he has been removed from all control and ownership positions in Clearcomm).

¹³ "We will address our concerns regarding Mr. Breen's involvement in PCS 2000's deception in the context where Mr. Breen has an ownership and/or controlling interest in the [WSI and WLP] markets, and make a determination therein of whether Mr. Breen possesses the requisite character qualifications to hold a Commission license." NAL, at ¶ 50.

¹⁴ Palmetto Communications Company, 6 FCC Rcd. 5023 (Rev. Bd. 1991).

interests would have been served by a demonstration that the intervenor lacked the character qualifications required of Commission licensees. Therefore, it was reasonable to expect that the applicant would be attacking the intervenor's qualifications in the context of that proceeding, even though the intervenor was not initially named as a party to the proceeding. It was primarily on the basis of that anomaly that intervention was granted in Palmetto.

No Palmetto-type anomaly is presented by this proceeding. The qualifications and licenses of ClearComm are in no way inconsistent with the vindication sought herein by the Westel Parties. The Westel Parties, therefore, cannot reasonably be anticipated to advance arguments adverse to the interests of ClearComm. Further, the PCS 2000 decisions make it clear that the Commission intended for those decisions to resolve, with finality, all questions regarding ClearComm's qualifications and licenses. Questions regarding Mr. Breen's qualifications, and all questions regarding the licenses sought by WSI and WLP, were relegated by the Commission to this separate and independent proceeding. There is no possibility, therefore, that the resolution of this proceeding, whether favorable or adverse to the interests of the Westel Parties, will have any effect upon the already adjudicated qualifications of, or license grants to, ClearComm.

Participation By ClearComm Will Not
Contribute To The Resolution Of This Proceeding

ClearComm cannot be granted intervenor status on the basis of the holdings in the West Jersey and Quality cases cited in the Petition.¹⁵ In both of those cases, intervention was granted because the intervenors demonstrated they could offer evidence of "decisional significance". By contrast, the Petition does not offer any particular evidence, much less evidence of "decisional significance". Instead, the Petition claims only that ClearComm, if allowed to intervene, "may well help 'sharpen up the evidence'".¹⁶ That claim falls far short of a demonstration that ClearComm, if granted intervenor status, would, or even could, offer evidence of decisional significance not otherwise available to the present parties.¹⁷

ClearComm simply has made no showing that its participation as an intervenor in this proceeding would fundamentally assist in the determination of the designated issues. The Petition's claim that ClearComm and its employees may be valuable sources of information, while begging for discovery to be directed to them, fails to demonstrate how ClearComm's active participation as a

¹⁵ West Jersey Broadcasting Company, 48 R.R. 2d 970 (1980); Quality Broadcasting Corp., 4 R.R. 2d 865 (1965).

¹⁶ Petition, at p. 7.

¹⁷ The Petition proffers the so-called "Independent Counsel's Report" prepared at the behest of Clearcomm. The Westel Parties, at the prehearing conference herein, challenged the probative value of that report, and now must object to the addition of any intervenor which would seek to base any part of its case herein on such unqualified evidence.

party could assist the Commission in the just or efficient resolution of the instant proceeding.¹⁸ In fact, allowing ClearComm to intervene at this time, more than two-and-one-half months after the Commission's release of the hearing designation order herein, would, perforce, occasion delay in the resolution of this proceeding. And any delay would unfairly infringe upon the Westel Parties' fundamental due process rights to the efficient and expeditious resolution of this proceeding.

CONCLUSION

The Petition makes it apparent that ClearComm seeks to intervene in the instant proceeding with the objective of supporting its claims in the collateral civil proceeding it instituted against Romulus and Mr. Easton, neither of whom are parties to this proceeding. Standing in Commission proceedings is accorded to persons not for the protection of their general private interests but only to vindicate the public interest with regard to matters within the zone of interest to be protected by the Commission. The civil claims of ClearComm do not fall within the Commission's zone of interest. Further, ClearComm has not demonstrated that granting it intervenor status in the instant

¹⁸ Patterson B/casting Co., 43 R.R. 2d 266 (1978) (petitioner alleged no new facts or issues; petition to intervene denied); Central Alabama B/casters, Inc., 45 R.R. 2d 1184 (1979) ("It therefore behooves the petitioner to demonstrate how it will assist the Commission Failing to make such a demonstration, the petition must be denied.")

proceeding would facilitate a just, efficient or timely resolution of this proceeding. Accordingly, the Westel Parties respectfully request that the Presiding Judge deny the Petition.

Respectfully submitted,

WESTEL SAMOA, INC.
WESTEL, L.P.
QUENTIN L. BREEN

By:



A. Thomas Carroccio
Ross A. Buntrock
Brian Cohen

BELL, BOYD & LLOYD
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Their Counsel

November 28, 1997

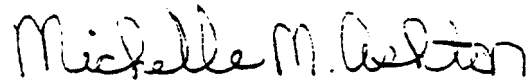
CERTIFICATE OF SERVICE

I, Michelle M. Ashton, a secretary with the law firm of Bell, Boyd & Lloyd, hereby certify that on this 28th day of November, 1997, I have deposited copies of the foregoing "Opposition to Petition to Intervene" in the U. S. Mail, first-class postage prepaid, addressed to each of the following:

*Honorable Arthur I. Steinberg
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Federal Communications Commission
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Michelle M. Ashton

* Hand Delivery

EXHIBIT E

cc received 10/20/97 @ 11:05 a.m.
Donna G. Bradshaw

ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:

WESTEL SAMOA, INC.

For Broadband Block C.
Personal Communications
Systems Facilities

and

WESTEL, L.P.

For Broadband Block F
Personal Communications
Systems Facilities

and

ANTHONY T. EASTON

WT DOCKET No.: 97-199

File No. 00560-CW-L-96

File Nos. 00129-CW-L-97
00862-CW-L-97
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00864-CW-L-97
00865-CW-L-97
00866-CW-L-97

Volume: 1

Pages: 1 through 46

Place: Washington, D.C.

Date: October 15, 1997

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Applications of:)	WT DOCKET No.: 97-199
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WESTEL SAMOA, INC.)	File No. 00560-CW-L-96
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Systems Facilities)	00865-CW-L-97
)	00866-CW-L-97
)	
and)	
)	
ANTHONY T. EASTON)	

Courtroom 1
FCC Building
2000 L Street, N.W.
Washington, D.C.

Wednesday,
October 15, 1997

The parties met, pursuant to the notice of the
Judge, at 10:02 a.m.

BEFORE: HON. ARTHUR I. STEINBERG
Administrative Law Judge

Heritage Reporting Corporation
(202) 628-4888

APPEARANCES:**On Behalf of the Wireless Telecommunications
Bureau:**

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I N D E X

WITNESS:PAGE

None.

Hearing Began: 10:02 a.m.

Hearing Ended: 11:10 a.m.

P R O C E E D I N G S

JUDGE STEINBERG: On the record.

This is the initial prehearing conference in WT Docket No. 97-199, involving applications filed by Westel Samoa, Inc. and Westel, L.P. for personal communications facilities.

According to the order designating this case for hearing, substantial and material questions of fact exist concerning the basic qualifications of Quentin L. Breen, Westel's controlling principal, to be a Commission's licensee.

In addition, the designation order directed Anthony T. Easton, a former officer and director of PCS 2000, L.P., to show cause why he should not be barred from holding any Commission authorizations. Because the issues concerning Mr. Breen and Mr. Easton arose from common facts and circumstances, the Commission consolidated the proceedings for hearing.

Let me first take the appearances of the parties? Westel Samoa, Inc. and Westel, L.P.?

MR. CARROCCIO: Thomas Carroccio, Brian Cohen, and Ross Buntrock of Bell, Boyd & Lloyd.

JUDGE STEINBERG: Okay, which is which?

MR. COHEN: I am Brian Cohen, Your Honor.

MR. CARROCCIO: And Mr. Buntrock.

1 get courtesy copies from any of the parties. So I didn't
2 even know the thing was pending. And not only that, but the
3 parties had not received a few of my orders.

4 So that was not a good situation, and we raised it
5 with the powers that be, and they assured us it wouldn't
6 happen again, but it seems to be happening.

7 So if you send me courtesy copies of whatever you
8 file, at least I will know that they have been filed, and I
9 can -- if I don't get a stamped copy, it's a way of us
10 checking if something has actually been filed.

11 I would urge you, with respect to discovery, to
12 make a good faith attempt to work with each other, and to
13 iron out your differences between the parties. I don't want
14 you to come to me without trying in good faith to work it
15 out between yourselves. I don't enjoy ruling on discovery
16 motions, but I know if I have to, I have to. And I think
17 both of you are experienced enough to know what you are
18 entitled to get and what you are not entitled to get, and
19 that you will be able to reach an accommodation that would
20 be a reasonable one.

21 Does the Bureau anticipate any discovery?

22 MR. WEBER: Yes, Your Honor. And actually, I
23 would like to maybe seek your direction on one particular
24 point.

25 JUDGE STEINBERG: Oh, boy.